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## **Legal and Institutional Component LTBP**

### **LEGAL BRIEFING PAPER Steering Committee Meeting Arusha, May 2000**

Date of issue: April 2000

### **Pollution Control and Other Measures to Protect Biodiversity in Lake Tanganyika (RAF/92/G32)**

### **Lutte contre la pollution et autres mesures visant à protéger la biodiversité du Lac Tanganyika (RAF/92/G32)**

Le Projet sur la diversité biologique du lac Tanganyika a été formulé pour aider les quatre Etats riverains (Burundi, Congo, Tanzanie et Zambie) à élaborer un système efficace et durable pour gérer et conserver la diversité biologique du lac Tanganyika dans un avenir prévisible. Il est financé par le GEF (Fonds pour l'environnement mondial) par le biais du Programme des Nations Unies pour le développement (PNUD)”

The Lake Tanganyika Biodiversity Project has been formulated to help the four riparian states (Burundi, Congo, Tanzania and Zambia) produce an effective and sustainable system for managing and conserving the biodiversity of Lake Tanganyika into the foreseeable future. It is funded by the Global Environmental Facility through the United Nations Development Programme.



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## 1. INTRODUCTION

One of the primary purposes of the Lake Tanganyika Biodiversity Project (“LTBP”) is to establish a legal and institutional framework to facilitate the long-term co-operative management of the Lake by the four countries surrounding it. The two primary mechanisms proposed for achieving this objective are:

- (a) the conclusion of a convention between the four riparian countries and the establishment of the Lake Tanganyika Authority in accordance with that convention; and
- (b) the preparation and implementation of a strategic action programme (“SAP”) for the ongoing management of the Lake.

A fourth draft of the *Convention on the Sustainable Management of Lake Tanganyika* (“the draft Convention”) in French and English has now been prepared with the full participation of senior policy makers and lawyers from each of the four countries.

This briefing paper is intended:

- to inform the Steering Committee on the progress made to date in finalising the draft Convention (section 2),
- to draw attention to the outstanding issues and obstacles that still need to be addressed if the Convention is to be signed and ratified by the riparian countries (section 3);
- to identify possible next steps (section 4);
- to draw attention to the matters on which the Steering Committee should take decisions at this meeting (section 5); and
- to make recommendations regarding the considerations to be taken into account in reaching those decisions (section 6).

## 2. CURRENT STATUS

On 5 November 1999 at a regional legal workshop held in Arusha, Tanzania, participants from the four riparian countries agreed on harmonised English and French texts of the draft Convention. A draft record of the proceedings of that workshop has been prepared and circulated. A copy is attached for ease of reference (appendix 1).

The objective of the Arusha Regional Legal Workshop was to produce French and English texts of the draft Convention to be tabled at this meeting of the Steering Committee. It was hoped that the Steering Committee would approve the texts and then forward the texts to the governments of each of the four riparian countries with the recommendation that the countries should enter into diplomatic negotiations with one another with a view to agreeing and signing the Convention at the earliest possible opportunity. It had been anticipated that this would be the final step in fulfilling the requirement for the legal component of the project as set out in the amended Project Document. Accordingly no funds have been budgeted for the involvement of the legal consultants after this meeting of the Steering Committee.

It is important to note that the current draft of the Convention only has the status of a working document produced by the LTBP and has not been agreed to by the four countries involved in developing it (at least not in the formal legal sense). This was intentional since it was agreed early on in the process that delegates to the legal workshops should not be regarded as formally negotiating on behalf of their countries as this would have slowed down the process considerably. Instead the discussions were aimed at reaching agreement on a text

which the delegates would feel able to recommend for adoption by their government. This process was based on the belief that if consensus could be achieved among the senior government officials and state legal advisors attending the legal workshops, this would greatly expedite subsequent formal negotiations and the signature of the draft Convention by the governments of each of the four countries.

Due to unforeseen circumstances, the duration of the Arusha regional legal workshop was reduced from five days to three days and accordingly the fourth draft of the draft Convention was not available to the participants before they left Arusha. It was agreed that subsequent to the workshop each delegation would scrutinise the text for errors and inform the legal consultants to enable them to edit the French and English texts in order to ensure that they correctly reflect the intentions of the parties.

The fourth draft of the draft Convention was duly circulated among the members of the LTBP project team and the governments of the four countries. Comments have been received from Tanzania.

In addition, comments on the text have been received from other parties, including Jean Paul Ledant and Nicholas Hodgson on the LTBP, Margaret Chi of UNOPS. There have also been further discussions concerning the institutional and financial arrangements to be established after the end of the project in August 2000, in the context of finalising the Strategic Action Programme.

### **3. OUTSTANDING ISSUES**

#### **3.1 Substantive Issues Concerning the Text**

A number of suggested amendments to the text of the draft Convention have been proposed subsequent to the Arusha regional legal workshop which agreed on the harmonised French and English texts. There is currently no forum (other than the Steering Committee) for discussing these proposed amendments between the riparian countries. The substantive comments received to date concern:

1. matters that were discussed and resolved at the workshops (these have been raised by people who were not directly involved in the process of developing the draft Convention);
2. issues which flow from an incomplete understanding of international law (again, these points have been raised by non-participants);
3. aspects of the draft Convention in respect of which there were legitimate differences of opinion that were resolved on the basis of compromises at the Arusha workshop but which have resurfaced; and
4. new points that were not discussed (some of which have the potential to contribute to improving the draft while others are likely to be controversial).

It is now clear that in order to expedite the final negotiation of the Convention there is a need for the draft Convention to be supplemented by a document that explains why certain matters have been included or excluded from the Convention, and gives and indication of some of the compromises involved.

### **3.2 Matters raised by UNOPS**

UNOPS has made two comments relating to matters that were discussed at the Arusha workshop and which are of fundamental importance. UNOPS has expressed the view that the text of the Convention that is forwarded by the LTBP to the governments of the four countries should:

- (a) explicitly refer to the “basin” concept which is widely accepted under international law; and
- (b) allow for the possibility of Rwanda becoming a party to the Convention at a later date.

There are two main grounds for the objections to the current draft expressed by UNOPS. Firstly, it believes that it would be inappropriate for the LTBP to recommend the adoption of a convention that does not expressly refer to the basin approach. Secondly, at a meeting held after the Arusha legal workshop, the LTBP Regional Steering Committee were unanimous in its view that the Convention should allow for the involvement of other states in the future but should not specifically mention Rwanda owing to the absence of a representative of that country.

The earlier drafts of the Convention included the basin concept and allow for the possibility of all states in the basin (i.e. including Rwanda) becoming a party to the Convention. However at the Arusha workshop the text was amended so that references to the basin were removed (although the Convention is still effectively based on this approach) and the current draft no longer provides for parties other than the four riparian states to join the Convention. These matters were discussed in some detail at the Arusha Workshop and the amendments were made in order to reach agreement between the four countries on the text of the harmonised Convention.

To date the legal consultants have adopted the position in relation to all substantive comments made after the Arusha Legal Workshop that no amendments (other than minor editorial changes) should be made to the text agreed at the Arusha workshop without these being agreed by all four countries. This position is based on the belief that to do otherwise would fatally undermine the consensus that has been built up between the delegations from the four countries during the process to date. However the Regional Steering Committee clearly has the power to amend the draft Convention before recommending it to the governments of the four countries.

### **3.3 Interim Arrangements**

The participants at the Arusha workshop recognised that since the LTBP was due to terminate in August 2000 there would not be any institution to co-ordinate and support the finalisation and signing of the draft Convention and the establishment of the institutions envisaged in the draft Convention. Accordingly the participants in the Arusha Workshop decided to request the Regional Steering Committee to urgently request UNEP and the GEF to provide funding and assistance to enable the riparian states to take the measures necessary to arrange and prepare for the first meeting of the conference of the parties and to establish the institutions envisaged in the draft Convention.

Subsequent to the Arusha workshop the team working on the preparation of the SAP recommended the establishment of an interim Lake management body which could evolve in to the Lake Tanganyika Management Authority following the signing and ratification of the Convention. The draft SAP envisages that the Interim Lake Management Body (“ILMB”) would consist of an Interim Lake Management Committee (“ILMC”) and an interim Lake Management Secretariat (“ILMS”). These would be described in the final SAP that would be endorsed by a senior government representative of the four countries at the final project Steering Committee meeting.

It is proposed that immediate objectives of the ILMB will be:

- to ensure that urgent actions identified in the SAP are implemented;
- to promote the signing of the Convention and the establishment of functioning management bodies required in the Convention; and
- to maintain information resources.

It is clear that some interim arrangements are required if the LTBP is to deliver long term benefits. In particular, it will be necessary to establish appropriate institutions and obtain funding for these institutions, as well as to support the process leading to the signature and ratification of the Convention.

#### **4. NEXT STEPS**

The following steps will be necessary to establish a fully functioning legal framework for the co-operative management of Lake Tanganyika:

1. A draft Convention recommended by the Steering Committee should be forwarded to the governments of each of the four countries (this document would have the status of a working document produced by the LTBP).
2. Each of the riparian countries would have to go through an internal consultation process to formulate a national position on the draft Convention prior to negotiating with the other countries. The usual process (which varies slightly between each of the countries) involves the lead ministry (e.g. the Ministry responsible for environmental affairs) obtaining comments from each of the other affected organs of government. The Ministry responsible for international relations would then be mandated by the cabinet to commence negotiations with the other states. In conducting these negotiations the relevant Ministry would be guided by the views expressed during the internal consultation process and any specific mandate from the cabinet.
3. Signature of the final text of the Convention by a representative (usually a senior minister) of each of the countries concerned. The signing ceremony is usually scheduled to occur at the end of the final negotiation session as a mechanism to ensure that negotiations are not endlessly protracted. Once the Convention has been signed, even though it will require ratification by the countries, each of the countries would be under an obligation not to defeat the purpose of the Convention pending its ratification.
4. The procedure within each country that must be followed after signature differs markedly between the Anglophone (common law) countries and the Francophone (civil law) countries. In both Tanzania and Zambia, it would be necessary for parliament to specifically debate and ratify the Convention but this would not be necessary in Burundi and the Democratic Republic of the Congo.
5. The depositing of instruments of ratification with the depositary (the Secretary General of the OAU is the depositary under the current draft Convention). The depositing of these instruments of ratification represent the final stage in the process. The Convention will not come into force and be legally binding before the requisite number of instruments of ratification has been deposited. (The draft Convention specifies that the Convention shall enter into force on the 90<sup>th</sup> day after the date and deposit of the second instrument of ratification, acceptance, approval or accession (article 41 (1)).

## 5. DECISIONS

The key questions for discussion by the Steering Committee at this stage in connection with the draft Convention are as follows.

1. Should the Steering Committee take the view that the LTBP has fulfilled its obligations under the project document as regards the legal component and leave it up to the countries to continue the process of negotiating the Convention from now on?
2. If the draft Convention is to be refined further under the auspices of the LTBP, how this is to be done, during what period of time, and how will it be funded?
3. What interim arrangements should be established to take forward the process of finalising and signing the Convention and establishing the institutions under the Convention, and how will this be funded?

As regards the recent substantive comments on the text of the draft Convention it would appear that the Steering Committee has at least three options.

- (a) The Steering Committee could accept the harmonised texts of the Convention as agreed at the Arusha workshop and forward them, together with all the substantive comments made subsequent to the Arusha workshop, to the governments of each of the four countries. The effect of this would be to leave it up to governments to decide in formal negotiations whether or not they agreed with particular comments and consequently whether the draft Convention should be amended.
- (b) The Steering Committee could itself consider the various substantive points made and direct the legal consultants to make appropriate changes. This would require additional budgetary allocations and would mean that the Steering Committee was effectively overruling the Arusha workshop. If the Regional Steering Committee restricts itself to considering the two issues raised by UNOPS and is able to reach a new consensus on the text that will be acceptable to each government, then amending the current draft would be fairly straight-forward. However, if substantial amendments are envisaged or if the new text is not acceptable to any one of the four Ministries of Foreign Affairs (which will not all be represented on the Regional Steering Committee) this could create opposition to the revised text of the draft Convention among the senior government legal advisers who were involved in the process but who will not be present at the Steering Committee meeting to debate the proposed amendments.
- (c) The Steering Committee could agree to convene further meetings between representatives of the four countries which would re-open debate on the agreed texts of the Convention with a view to agreeing a further (fifth or sixth) draft. It should be noted that if this option were to be adopted it would be necessary to limit the debate and impose time limits since every time such a document is amended, the amended version will give rise to new comments with a result that the process is potentially never-ending.



## 6. RECOMMENDATIONS

The legal team recommends that the Steering Committee take note of the following in reaching its decisions.

1. The progress made to date in preparing the draft Convention appears to be sufficient to meet the obligations under the project document. Accordingly discussion on the draft Convention under the auspices of the LTBP (as opposed to in the course of diplomatic negotiations between the countries) should not be re-opened unless there is sufficient time, funding and commitment from each of the four countries to ensure that this process will either end with the signature of the Convention, or at the very least, will vary substantially increase the likelihood of the Convention being signed.
2. There was very substantial opposition among a number of senior government advisers and officials to using the term "basin" in the draft Convention and to allowing other countries to become parties to the Convention. A substantial amount of compromise and redrafting was necessary to achieve the compromise reflected in the current text and we would recommend that the wording should only be changed if the Regional Steering Committee is confident that it will be able to convince each of the four governments of the benefits of reverting to the original wording.
3. If it is decided that the discussions on the draft Convention will be re-opened, this should be done subject to certain pre-conditions. We would recommend that the following pre-conditions be included:
  - (a) before another meeting between representatives from the four countries is convened, there must be full national consultations in each country to ensure that all potential substantive objections are identified and all relevant comments should be submitted in writing to the LTBP;
  - (b) discussions should be restricted to matters identified prior to the meeting and to any consequential changes that are necessary to the text and discussion on other parts of the text will not be permitted; and
  - (c) each delegation must include a senior lawyer from the ministry responsible for foreign affairs and a senior representative (such as a permanent secretary or director general) from the ministry that will be responsible for co-ordinating the internal consultation process.
4. Prior to any future meetings to discuss the content of the Convention a detailed commentary on the text should be circulated to ensure that all new comers to the process are fully briefed and to avoid re-opening old debates. Such a document is currently being written.
5. The legal team recommends that whatever interim arrangements are established, they should be designed to ensure that there is an incentive for all participants (including the officials involved) to ensure that such arrangements are only transitional and that permanent arrangements are established as envisaged in the draft Convention within a defined period of time.

## Appendix 1

### PROCEEDINGS OF THE REGIONAL LEGAL WORKSHOP HELD IN ARUSHA, TANZANIA (1- 5 November 1999)

#### 1. Introduction

The workshop was convened by the Lake Tanganyika Biodiversity Project ("the Project") in order to prepare harmonised French and English texts of the proposed Convention for Lake Tanganyika based on the recommendations of the Anglophone and Francophone Sub-Regional Workshops. The Workshop was attended by delegates from the Republic of Burundi, the Democratic Republic of Congo, the United Republic of Tanzania, and the Republic of Zambia. (A list of delegates is attached as Annex 1).

The intention is that the harmonised texts of the draft Convention would then be presented to the Regional Steering Committee of the Project and, subject to the approval of the Steering Committee, the Project would be recommended to the Governments of the four riparian countries that the draft Convention be signed in order to provide an appropriate legal and institutional framework for the co-operative and sustainable management of Lake Tanganyika. Thereafter the responsibility for negotiating, agreeing, signing and ratifying the Convention would lie with the Governments of the four countries although the Project would support the process where possible until the Project ends in August 2000.

#### 2. Proceedings on Monday, 1 November 1999.

The Workshop was opened on the morning of Monday 1 November 1999 by the Co-ordinator of the Project, Dr. Andrew Menz, who asked delegates to observe a minutes silence in honour of the late Dr. Julius Nyerere, the former President of the United Republic of Tanzania.

Dr Menz welcomed all the delegates and Mr Blaise Kuemlangan of the FAO. In his opening address Dr Menz stressed the importance of agreeing a legal and institutional framework for managing the Lake and the value that this would have in securing further international funding. He also requested that each country provide information regarding the internal procedures that would be required before the draft Convention could be signed and ratified, for the benefit of the Project and of the other countries.

Dr Menz advised the delegates that due to the breakdown of an aircraft the Burundian delegation were not present and were unlikely to arrive until Tuesday afternoon or evening. After a brief discussion it was agreed that no substantive discussions could be held in the absence of one of the delegations and accordingly the Workshop was adjourned until the arrival of the Burundian delegation. The Consultants requested that the delegations present use the spare time to go through the draft Convention once more and to consider possible improvement to the definition of "environment" which had not been agreed.

#### 3. Tuesday, 2 November 1999.

The Workshop did not convene as the Burundian delegation only arrived that evening.

#### 4. Wednesday, 3 November 1999

The Workshop re-convened on the morning of Wednesday 3 November 1999.

##### 4.1. Procedural matters

It was proposed that each delegation take turns to provide the chairperson of the Workshop. However during discussion it was pointed out that since each country was only represented by a delegation of two or three people, it would be difficult for delegations to participate fully in the discussions if one of their number were required to act as chairperson. For this reason the following was agreed.

4.1.1. Mr. Cormac Cullinan (international legal consultant) would act as chairperson while Mr Stephen Hodgson (international legal consultant) would record the agreed changes to the draft Convention.

4.1.2. Each delegation would also record the changes made to enable the texts prepared by Mr Hodgson to be checked since it was difficult to record simultaneously all the changes in both the English and French texts.

Mr Hodgson explained that the text provided to each delegate which would form the basis of the discussions (Working Draft No. 3) included portions of text enclosed in square brackets. This indicated that the text had been deleted from or added to, either the English or the French version of the draft Convention discussed at the Sub-Regional Workshops (version 2.1) by one of the Sub-Regional Workshops. In the French version of Working Draft No. 3 text that had been added or deleted by the Anglophone Sub-Regional Workshop was italicised while in the English version of Working Draft No. 3 the text in italics had been added or deleted by the Francophone Sub-Regional Workshop. Mr Hodgson also drew the attention of the delegates to the comments on the draft Convention that had been received from the Food and Agriculture Organization of the United Nations and from the United Nations Environment Programme.

Mrs Macha (Tanzania) indicated that since minutes of the discussions of Sub-Regional Workshop had not been produced there was no record of why amendments had been proposed or of any objections to the text. The Chairman pointed out that it had never been the intention to produce minutes of the Sub-Regional Workshops as this would have been extremely time consuming and all the decisions were effectively reflected in the revised working draft of the Convention. The Chairman suggested that Mrs Macha's concerns could be addressed in relation to the current Regional Workshop by producing a record of the proceedings which would include any specific matters that delegates wished to have recorded. In addition, the Consultants would produce a document explaining the rationale behind the draft Convention and the drafting process which could be used as a background document to brief persons who had not been involved in the process.

4.1.3. It was agreed that the Consultants would prepare draft proceedings of the Workshop and a background document explaining the rationale of the Convention and the process by which it was prepared.

The Workshop then discussed whether or not the Workshop was in a position to agree the text of the draft Convention. Particular concern was expressed by the Tanzanian delegation since the consultative process that was scheduled to occur between the Anglophone Sub-Regional Workshop and this Workshop had not been completed. This meant that the lawyers present had not been briefed by other national specialists as to whether or not certain provisions of the Convention were appropriate. The Zambian delegation was in a similar position.

Mrs Macha (Tanzania) expressed the view that the Workshop could not produce a final text and that the process of agreeing a Convention had a long way to go. Mr Chitalu (Zambia) indicated that in his view the Project should have made more funds available to fund additional meetings at the national and regional level to discuss the Convention. The Chairman responded that he had been informed that it would not be possible for the Project to finance further meetings to discuss the Convention and that accordingly the Workshop should proceed on the assumption that this was the last opportunity for the lawyers and technical experts from the four countries to discuss the text of the Convention.

The Chairman reiterated that the text produced by the Workshop would have the status of a Project document to be recommended to the countries and therefore, from a strictly legal perspective, the entire Convention could be regarded as being in square brackets since it would not have been formally agreed to by an official delegation empowered to do so. Nevertheless it was important for the lawyers and other experts present to attempt to agree a harmonised text without square brackets which the delegates present felt able to recommend to their Governments. Clearly issues might emerge during the Workshop on which

agreement could not be reached for political reasons. Any such issues would clearly have to be agreed at the diplomatic level. However the Chairman reminded delegates that it was unlikely that there would be more legal experts and other experts present at any subsequent meetings between the States than were present at this Workshop and accordingly delegates should strive to agree all legal and technical issues.

The Zambian delegation pointed out they were uncertain about the appropriateness of some articles including some of the definitions. They did not wish to reject these provisions but believed that it was important to record that they had concerns about them and that they may need to be amended. It would be acceptable to the Zambia delegation if the square brackets were removed in such cases provided that the record of the proceedings recorded their concerns about these areas.

The Chairman proposed that where a delegation objected to a particular provision then the Workshop should discuss and resolve the matter. If a delegation was not confident about a particular word but did not have a specific alternative then this should be recorded in the record of proceedings.

4.1.4. It was agreed that the objective of the Workshop should be to produce harmonised French and English texts of the draft Convention without square brackets which the delegates at the Workshop would feel able to recommend to their respective Governments.

4.1.5. It was agreed that where a delegation was uncertain about a provision and felt unable to unequivocally recommend it but was not able to propose alternative wording, the existing text should be retained without square brackets but the concerns should be noted in the record of proceedings of the Workshop.

4.1.6. In view of the lost days it was agreed that the bus would leave the hotel for the Conference Centre at 08:15 the next morning.

## **4.2. Substantive discussions**

The Workshop then moved to considering Working Draft No. 3 of the Convention and agreed various amendments to harmonise and improve the Preamble and Article 1. These are recorded in Working Draft. No. 4.

Various delegates requested that the following points be noted.

4.2.1. Article 1: Mrs Macha (Tanzania) expressed concern that the definition of "environment" may not be sufficient to encompass all relevant matters but in the absence of comments from scientific experts was unable to propose any further amendments to the definition. This was supported by Zambia.

4.2.2. The Zambian delegation indicated that they wished to give further consideration to the use of "aquatic environment" in the definition of "Lake environment".

## **5. Thursday, 4 November 1999**

### **5.1. Procedural Issues**

After lunch the Chairman pointed out that at the current rate of progress the work would not be finished by Friday. He emphasised the need to find a way of progressing more quickly given the fact that two of the five days of the Workshop had been unavoidably lost. The Chairman proposed that to save time debate should be confined to the text in square brackets (in other words, to harmonising the versions of the Convention produced at the two Sub-Regional Workshops) and that no debate be permitted on other provisions which had already been fully discussed at the Sub-Regional Workshops.

The Zambian and Tanzanian delegations opposed this proposal and stated that a full discussion of all relevant issues should be permitted and that if there was insufficient time at this Workshop to do so the Project should arrange additional meetings.

## **5.2. Substantive Issues**

Mrs Macha reiterated the point made by her at the Anglophone Workshop that there should be an article on Water Quality. The Chairman reiterated what he had said at the Anglophone Workshop, namely that the Consultants had attempted to draft such an article but had not been able to produce text that was meaningful and did not repeat any other article. The Chairman proposed that the heading "Water Quality" in Working Draft 3 be deleted unless someone was able to table text for discussion by the following morning. The Congolese delegation pointed out the issue of water quality is addressed indirectly by other articles and that the Convention would enable water quality standards to be developed in due course. The Zambian delegation proposed that it be recorded that the Workshop could not come up with the text of an article on water quality.

5.2.1. It was agreed to record that the Workshop could not come up with the text of an appropriate article dealing specifically with water quality.

The Workshop had a protracted discussion on Article 14. Prior Notification and the related provisions of Article 15 on Environmental Impact Assessment. The Francophone countries expressed the view that these provisions were inappropriate for their circumstances and would be difficult to implement in the short term although they may be appropriate at some future date. Both the delegations of Burundi and the Democratic Republic of Congo indicated that the text which appeared in Draft 2.1 would not be acceptable to their Governments. The Anglophone delegations wished to retain most of the provisions that appeared in Draft 2.1 as they considered that these provisions established important procedures for protecting the Lake. The Francophone countries suggested that these issues be dealt with in the future by way of a protocol and that if necessary the Convention could make specific reference to the need for this protocol. The Tanzanian delegation expressed concerns with this approach since a protocol would only bind the parties to the protocol and there was no guarantee that all countries would ratify the protocol. After initially agreeing to extensive amendments to Article 14 similar to what had been proposed by the Francophone Workshop, the Zambian delegation, supported by the Tanzanian delegation, advised the Workshop that they would be unable to recommend the text proposed by Francophone Workshop to their governments.

5.2.2. It was agreed to convene a small working group to discuss the meeting during the evening in an attempt to resolve the impasse.

## **6. Friday, 5 November 1999**

### **6.1. Procedural Issues**

After lunch the Chairman indicated that at the current rate of progress it may not be possible to complete the discussion of the draft Convention by the end of the day and asked whether or not the delegations would be prepared to work until lunch time on Saturday. Several of the delegates indicated that this would not be possible.

6.1.1. It was unanimously agreed to work as hard as possible to complete the work during the afternoon and early evening.

The Chairman pointed out that a great deal of time was being spent debating the words to be used to harmonise the French and English texts even after there was agreement on the meaning.

6.1.2. It was agreed that to expedite discussions, once there was agreement on the substance of the text any translation issues could be left to the Consultants to resolve.

The Burundian delegation drew attention to the remarks of the UNEP lawyer regarding the need for transitional arrangements. The Burundian delegation pointed out that since the project was terminating in August 2000 there would be no mechanism for co-ordinating and funding the establishment of the institutions envisaged by the draft Convention, including making preparations for the first meeting of the Conference of the Parties. It was essential

that transitional arrangements be made otherwise the institutions would never become operational.

6.1.3. It was agreed that the Workshop should request the Project Steering Committee to approach the GEF or other appropriate organisations to oversee the transition period until the institutional arrangements envisaged in the Convention had been established and the Chairman was requested to draft an appropriate resolution (attached as Annex 2).

## **6.2. Substantive Issues**

6.1.4. Mrs Macha (Tanzania) expressed the view the Convention could be improved by listing all the institutions mentioned in the Convention in a single Article and by dividing the Convention into chapters so that there would be a Chapter heading reading "Institutional Arrangements".

6.1.5. Mrs Macha (Tanzania) expressed concern that the Conference of the Parties was not part of the Lake Tanganyika Authority. The Zambian and Burundian delegations expressed the view that the Conference of the Parties must be separate from the Authority since it is important that the Authority is accountable to the Conference of the Parties.

6.1.6. Mrs Lubasi (Zambia) expressed the view that describing the functions of the Lake Tanganyika Authority as a whole in Article 23(2) was confusing as these overlapped with the descriptions of the functions of the organs of the Authority, namely the Management Committee (see Article 24(9)) and the Secretariat (see Article 25(3)).

6.1.7. The Zambian delegation expressed concern that the level of expertise required to be a member of the management committee was not defined more clearly in Article 24 (2).

6.1.8. The Zambian delegation expressed concern about the use of the term "Executive Director" rather than "Director" (articles 24 and 25).

6.1.9. Mrs Macha (Tanzania) expressed the view that the precise structure of the Secretariat as discussed at the Lusaka workshop (i.e. setting out the various departments and the proposed staff of the Secretariat) and the Technical Sub-Committees should be expressly mentioned in the Convention (see Article 25). This was not supported by the Zambian delegation.

Mr. Blaise Kuemlangu of the Development Law Service of the Food and Agriculture Organization of the United Nations made a number of suggestions to give effect to the written comments made by his colleagues at the FAO.

He suggested in relation to Article 26 on Technical Sub-Committee:

- that the name "Technical Sub-Committees" be replaced with the term "Technical Committees";
- that the Lake Tanganyika sub-committee of the FAO Committee for Inland Fisheries in Africa (CIFA) be integrated into the institutional arrangements proposed under the Convention by requiring that the members of the proposed Fisheries Technical Committee be drawn from existing institutional arrangements for fisheries management on Lake Tanganyika;
- that the article on technical committees (Article 26) be moved to immediately after the article on the management committee (Article 24); and
- that the membership of the Fisheries Technical Committee be increased to more than one representative of each country.

6.1.10. It was agreed that the term Technical Committee should be used and that it highly desirable that the members of the Fisheries Committee be drawn from the members of the CIFA subcommittee on Lake Tanganyika but that the proposed changes to the Convention should not be accepted.

6.1.11. Mr Nyakageni (Burundi) made the point in relation to Annex I, Part A, number 9 that it was not the volume of water abstracted that was of primary importance but whether or not the remaining flow of water into the Lake was sufficient to avoid prejudice to the biological diversity of the Lake.

6.1.12. Mrs Lubasi (Zambia) pointed out that in her view in Annex III paragraphs 1 and 2 of Article 3 were contradictory because paragraph 1 provided that a Fact Finding Commission could determine its own rules of procedure while paragraph 2 specified that it had to adopt its reports by a majority vote.

6.1.13. Mr Bibamiriza (Burundi) reported back to the Workshop, which accepted, the amendments to Articles 14 and 15 that had been agreed the previous night by the working committee.

### **6.3. Closure**

The Chairman thanked everyone for their dedication and hard work in completing the task despite having lost 40% of the time originally set aside for the Workshop.

The Workshop closed at 19:30 hours.

## Workshop Report: Annex 1

### LIST OF PARTICIPANTS

1. **Burundi**
  - a) Mr Boniface Nyakageni
  - b) Mr Benoit Bibamiriza
2. **Democratic Republic of the Congo**
  - c) Mr Mbusu Ngamani
  - d) Mr Mady Amule
  - e) Professor Kalambayi Lumpungu
3. **Tanzania**
  - a) Mrs Verdiana Macha
  - b) Mr Rajab H Rajab
4. **Zambia**
  - a) Mr George Chitalu
  - b) Mrs Chanda Lubasi
  - c) Mr Aswell Chisanga
5. **FAO – Representative**  
Mr Blaise Kuemlangan
6. **International legal consultants**
  - a) Mr Cormac Cullinan
  - b) Mr Stephen Hodgson

## Workshop Report Annex 2

### DRAFT RESOLUTION OF THE REGIONAL LEGAL WORKSHOP FOR SUBMISSION TO THE REGIONAL STEERING COMMITTEE OF THE LAKE TANGANYIKA BIODIVERSITY PROJECT

This Workshop:

NOTING:

1. the comments from UNEP on the draft Convention regarding the importance of establishing interim arrangements prior to and during the first meeting of the Conference of the Parties; and
2. that the Lake Tanganyika Biodiversity Project is due to terminate during 2000 and thereafter there will not be any institution to co-ordinate and support the establishment of the institutions envisaged in the draft Convention agreed at this Workshop;

RESOLVES

to request the Regional Steering Committee of the Lake Tanganyika Biodiversity Project to urgently request UNEP and the GEF to provide funding and assistance to enable the riparian States to take the measures necessary to arrange and prepare for the first meeting of the Conference of the Parties and to establish the institutions envisaged in the draft Convention agreed at the Workshop.